



December 12, 2003

Ms. Carmen Suro-Bredie
Chairman, Trade Policy Staff Committee
Office of Trade and Economic Analysis
Room H-2815
U.S. Department of Commerce
Washington, DC 20230

Dear Ms. Suro-Bredie:

Thank you for providing the Telecommunications Industry Association (TIA) with an opportunity to participate in the development of the National Trade Estimate (NTE) report by highlighting the trade concerns which affect our industry. Obtaining greater access in foreign telecommunications equipment markets is a key priority of TIA. On behalf of our 700 member companies throughout the United States, we welcome this opportunity to identify barriers that skew the market unfairly and hinder the free flow of products in the global market.

We recognize that your request for comments included instructions to provide estimated increases in exports and the methodology used to make these estimates. We certainly believe that this is valuable information; however, much of this information is proprietary and is not easily available from individual companies. Nevertheless, we hope that the information we have provided below will be useful as you address trade issues of importance to TIA member companies.

Colombia

Failure to Honor WTO and Contractual Agreements

In February 1997, Colombia agreed to the Basic Telecommunications Services Agreement, with an implementation date of February 5, 1998. However, Colombia has not met its obligations, particularly with respect to establishing a transparent and non-discriminatory regulatory process and an independent regulator.

Nor does TIA believe that Colombia is living up to its obligations in the Andean Trade Preferences Act (ATPA). The ATPA expired in December of 2001, but it was renewed as the Andean Trade Promotion and Drug Eradication Act (ATPDEA) as part of the Trade Act of 2002. On September 25, 2002, President George W. Bush announced that Colombia, along with Bolivia and Peru, would receive new Andean trade benefits under the ATPDEA. (The Administration subsequently announced that Ecuador had met the certification criteria to receive benefits under the ATPDEA.) These benefits comprise a

trade preference program that provides four Andean countries with duty-free access to U.S. markets for approximately 5,600 products. All existing provisions of the ATPA were renewed and the program was expanded to include 700 additional products. However, the law requires a country certification process for the new, expanded portion of the program, which includes receiving public input on each country's eligibility.

It is essential for ATPDEA beneficiary countries to follow established WTO rules and adopt, implement and apply transparent, non-discriminatory regulatory procedures and enforce their arbitration and court awards. These actions are a condition of Colombia's benefits under ATPDEA. Nonetheless, in 2001 and 2002, Colombia's state-owned telecommunications operator, Telecom, repeatedly failed to honor a specifically binding arbitration decision involving the telecom network installed by a U.S. supplier, as required under the previous ATPA guidelines; these guidelines have since been incorporated and expanded into the ATPDEA.

Although the Colombian government eventually made an award to the U.S. supplier in the arbitration case, this action was only taken after prolonged pressure from the U.S. Government and the threat that Colombia would not receive the new, expanded benefits under ATPDEA.

Currently, there are several contracts pending with suppliers and arbitration proceedings have been filed. Telecom has filed arbitration claims with the Bogotá Chamber of Commerce that could result in a declaration that the contracts are "null and void." The failure of the Colombian Government to honor contractual commitments of state-owned entities puts at risk future foreign investment in Colombia at a particularly important moment in its history. It also further erodes confidence in the overall investment climate as well as the broader international business community. TIA urges USTR to continue to pressure the Colombian Government to fulfill contractual commitments with U.S. suppliers or risk losing its opportunity for an FTA with the U.S.

People's Republic of China

(NOTE: Some of this information was compiled via USITO, TIA's affiliate office in Beijing. USITO represents AeA, CSPP, ITI, SIA, SIIA and TIA.)

Import Tariffs

China's commitment to join the ITA has resulted in the lowering of a vast majority of IT product tariffs to zero, most in January 2002 and most of the remaining by 2004 or 2005.

USITO is pleased that earlier this year, the Chinese government lifted its discriminatory end-user certificate requirements on 15 high-tech product categories¹ and replaced them with a certification system that is compatible with obligations under the WTO Information Technology Agreement (ITA). Consequently, on April 24, 2003, WTO

¹ The affected products included quartz reactor tubes, spin dryers, and ion beam milling machines used in the production of semiconductor wafers, telecommunications microphones, portable receivers for calling and paging, radio-telephony aeriels, and electric amplifiers used as repeaters in telephony products

members approved China's request to join the WTO Committee of Participants on the Expansion of Trade in Information Technology Products (ITA Committee) after the U.S. Government lifted its veto of the Chinese application.

Technical Barriers to Trade (Technical Regulations, Standards, Certification, Conformity Assessment and Type Approval)

TIA and USITO look favorably upon the efforts that China has made the last few years in the areas of standards, certification, type approval, and other related items.

Improvements to the accessibility of government-issued information on standards administration and issuance, certification procedures and contact information for certifying bodies, and the procedures and detailed requirements for type approval application had not gone unnoticed.

However, it is important to note that the standards development process continues to be fraught with unclear/overlapping authority jurisdictions, lack of transparency, lack of apparent planning, and lack of open, well-publicized and meaningful comment periods. Furthermore, TIA and USITO are deeply concerned about what appears to be an emerging tendency to use locally developed standards for protectionist purposes.

With specific attention to the recommendations contained below and close cooperation between Chinese government and the IT industry representatives, we expect the reduction of potential technical barriers to trade.

Mandatory Technical Regulations – WAPI: The Chinese government recently published a “WLAN Authentication and Privacy Infrastructure” (WAPI) standard for encryption of wireless LAN transmissions, and foreign companies involved in the wireless LAN industry say that they have not been provided with enough information to comply. In addition, sufficient and widely-used international standards already exist.

China has now begun implementing this new encryption standard for wireless communications and has announced that, as of January 1, verification of "WAPI" compliance will be part of the compulsory registration process for electronics. Implementation may be done only by a designated Chinese company.

It is our understanding that China has not notified WTO Secretariat of the pending WLAN standards. We recommend as an absolute minimum 60-days notice and comment period prior to adoption of these two standards to ensure that all parties have the opportunity to make comments. (Realistically, 6-12 months notice is needed to accommodate software and hardware product development cycles.) We also note that TBTA Articles 2.2, 2.3 and 2.4 require that standards not create unnecessary obstacles to international trade and that members should use international standards where they exist.

While industry fully recognizes the need for encryption requirements for WLAN systems, we are very concerned with China's adoption of a single and unique encryption standard. The implementation of a unique standard in the Chinese market will result in increased costs to consumers in China as well as delay in the introduction of advanced WLAN

products. Contrarily, the use of internationally recognized standards permits manufacturers to market one global product rather than costly country-specific products. Manufacturing a single global product reduces the cost of manufacturing and benefits consumers in China by promoting the rapid introduction of the most advanced products into that market. Furthermore, since WAPI deviates from established international security standards, it will lead to incompatibilities and interoperability issues between products, hindering Chinese businessmen and women engaged in expanding Chinese commerce beyond China.

Currently the IEEE Task Group I is working on a supplemental draft to the 802.11i standard (multilevel security scheme). We think it would be more productive for the Chinese to contribute to the evolution of these standards to create truly robust international standards rather than create a unique standard for use only in the Chinese market. If China does not want to participate in the 802.11i process, it should, at a minimum, make its own standards process as open, consultative, and gradual as the IEEE process, making every step of standards development fully transparent, allowing at least twelve months for optional testing following the publication of a complete and implementable standard, and not requiring implementation until the standard has been widely tested by international as well as Chinese industry.

National Standards and Certification/Accreditations: It is apparent that the Chinese government has made substantial progress in designing a national infrastructure for the certification, accreditation and standardization processes. Nonetheless, as far as standardization technical committees are concerned, there is room for improvement. For instance, foreign-invested companies do not, in essence, receive national treatment in technical committees. FIEs are generally not accorded the substantive rights to participate and cast votes and often not even given clear access to information on methods that the committees use to set their own standards or adopt international standards.

USITO would like to see China continue the trend of adopting internationally accepted standards and maintain an open dialogue with industry and relevant stakeholders to ensure that Chinese consumers have access to the same high-quality, cutting-edge technologies as the rest of the global marketplace.

USITO hopes that China will adopt globally relevant, internationally developed standards, utilizing the WTO/TBT November 2000 Agreement principles, which are accepted for product certifications within the largest reasonable scope. It also looks to the fulfillment of a promise made by a senior SAC official in late 2001 at a USITO event that foreign-invested companies in China would be given equal access to standardization technical committees in the high-tech area with full substantive rights to participate and cast votes. We are very encouraged by the recent announcement in May of this year that China will allow foreign companies to participate in the CISPR I Committee. This committee is responsible for electromagnetic compatibility standards for IT and multimedia devices. We see this as a very positive step forward and hope that foreign industry will be invited to participate in more standards committees related to the IT

sector. Over the past three years, the government has begun inviting “qualified” foreign companies to participate in standard bodies, as observers. Also, some foreign firms are limited to “correspondence” status, receiving all written materials but not having the right to attend, speak, or vote at meetings. USITO supports a standards development processes that is open, transparent, fair, non-discriminatory, and driven by globally relevant market needs and developments.

We urge China to allow foreign and domestic industry to participate in the development of China’s standards regimes and to permit foreigners to join Chinese standards bodies as full members. Chinese State Councilor Wu Yi (as well as CNCA and SACS) has repeatedly stated that China would adopt globally relevant international standards as much as possible. However, concern remains over China’s use and recognition of *de facto* and other international standards (such as those developed by industry or *ad hoc* groups).

Another problem is the potential conflict between China’s standardization authorities and various technical committees. For example, the setting of 3G technology standards is the responsibility of the China Communications Standards Association (CCSA)/China Wireless Telecommunication Standard group (CWTS), and the setting of other electronic and information technology product standards is the responsibility of the National Informatization Standard Committee (NISC)/Chinese Electronics Standardization Institute (CESI). Whether or not the technical committees work directly with industrial ministries on standards setting, the influence of the ministries is rarely absent because ministry representatives generally staff China’s technical committees. In order to guarantee a broader range of viewpoints, USITO hopes the technical committees can work more closely with the SAC on the adoption of globally relevant international standards for which the relevancy to China is established on valid field data.

We also recommend that China establish a clearer, more organized, and more effective structural model detailing which organizations are responsible for the setting of particular standards.

It is recognized that China has engaged positively with the IECEE CB Scheme for product safety test report acceptance. This is a common and essential tool used within the product safety community to eliminate the redundant and time consuming re-testing of products at multiple laboratories. There are new programs under development within the IECEE aimed at improving data acceptance, international conformity assessment harmonization and recognition of internationally applicable conformity assessment. However laboratories in China today do not make the best use of these well-practiced international programs. They often require additional samples, repeat testing already performed and offer no improved assessment time, even in light of the significant reduction in national testing requirements the IECEE programs are intended to offer. The current practice in China remains significantly more difficult than in other countries.

USITO hopes that the Chinese government will make efforts improve the application of the IECEE CB Scheme by encouraging acceptance of CB Scheme test reports by their

national laboratories, specifically by eliminating the need for additional samples or redundant testing.

Conformity Assessment: According to China's WTO commitments, foreign services suppliers, which have been engaged in inspection services in their home countries for more than three years, are permitted to establish joint venture technical testing, analysis and freight inspection companies with no less than US\$350,000 in registered capital. Within two years after China's accession, foreign majority ownership will be permitted and within four years after China's accession, wholly foreign-owned subsidiaries will be permitted.

While we look forward to the implementation of this commitment, we are unaware of any development of the regulatory framework that would allow foreign testing and certification organizations to apply for and receive approval to conduct such conformity assessment services for the domestic CCC mark. [NOTE: This distinction is important because foreign-invested joint ventures are able to conduct testing on and certify products for export to other markets. But they cannot "legally" test or certify products for the domestic CCC mark.]

USITO urges China to immediately develop the regulatory framework that would allow testing and certification organizations to apply for and receive approval as designated testing and certification bodies in China.

Type Approval: Presently, China's test-cycle for the type approval of telecommunications equipment can take as long as 13 weeks, while in the U.S. and Japan, the majority of such approvals are completed within 30 days. Relatively speaking, the life-cycle of IT products is quite short; long type approval periods can seriously affect production schedules, time-to-market, and revenue flows – a serious matter for foreign and domestic companies alike. MII has issued regulations, the Regulations on Network Access of Telecom Equipment, which require review and approval or rejection within 60 days. We hope that this time limit will be observed and treated as the longest possible period for consideration.

In addition to the CCC mark, telecommunication producers often have to undergo two tests administered by two separate departments of the Ministry of Information Industry (MII), the network access test of the Telecommunications Administration Bureau (TAB) and the spectrum interference test of the Wireless Radio Regulatory Bureau (WRRB). Quite often, the CCC, EMC, TAB, and WRRB have significant overlapping and redundant testing criteria.

USITO suggests that the Chinese government simplify and consolidate redundant tests, and shorten testing periods. We understand that CNCA, MII, and other relevant organizations have recently acknowledged such proposals from domestic and foreign industries, and we would like to work cooperatively with the Chinese government to develop mutually advantageous solutions.

In sum, USITO would like the Chinese government to:

- Adhere to the principles of the WTO TBT Agreement and ensure that their mandatory standards and regulations are the least trade restrictive as necessary to fulfill legitimate objectives and avoid unnecessary obstacles to trade;
- Increase transparency in the adoption process of globally-relevant international standards for which the China relevancy is established based on valid field data and domestic standards;
- Allow foreign-invested companies full participation rights in Chinese technical committees;
- Consolidate standards making bodies within governmental divisions, and;
- Simplify the testing process and period for telecom equipment to achieve comparable required elapsed testing and approvals times.

Telecommunications Services

China has taken a number of positive steps to implement its WTO telecom services commitments. Although China has promulgated or amended thousands of laws to comply with certain WTO commitments, a long overdue telecom law is still not on the horizon. Moreover, the current regulator, the Ministry of Information Industry (MII), cannot be considered “independent” because one of its primary functions continues to be supporting the state enterprises. As a result of this conflict of interests, the regulator, with the intent of protecting incumbent operators, has persisted in its traditional pattern of issuing edicts distinctly favorable to SOEs without allowing public discussion or comments from industry.

Telecommunications Law: China has been drafting a new Telecommunications Law for many years, and there is still neither an announced timetable for its adoption, nor an indication of the key aspects of the law’s framework. According to Chinese legislative procedures, MII is responsible for drafting the law and then submitting the draft to the State Council Legislative Affairs Office for review. After the draft passes that review, it can be submitted to the National People’s Congress for a series of, usually three, readings. The whole process may take several years. The law is needed in order to definitively set the stage for competition in the Chinese telecom market and to create an independent regulator. USITO and its member companies would like to participate in the drafting process to help the Chinese authorities learn more from international experience and to structure China’s telecommunications legislation in a manner more conducive to foreign investment.

Independent Regulator: In the absence of a telecom law, the main instrument of regulation in the telecom arena is the *Telecom Administration Regulations* (“Regulations”) promulgated by the State Council in September 2000, as well as a series of decrees issued by MII, the ministry that currently has oversight of the telecom industry. Article 1 of the *Regulations* says that the purpose of drafting the regulations is to “regulate the order of the telecom market, maintain the lawful rights and interests of telecom users and operators, safeguard the security of telecom networks and information, and promote the healthy development of the telecom sector.” Article 4 states that the

supervision and regulation of telecom services shall abide by the principles of “separating government from enterprise, breaking up monopoly, encouraging competition, and promoting development” and “openness, fairness and impartiality.” Aside from the reference to “separating government from enterprise,” the *Regulations* do not provide for the establishment of a truly independent regulator, specifically the creation of a new bureaucratic entity such as the regulatory oversight commissions established for banking, insurance, securities, and electricity industries. MII has been the *de facto* “independent” regulator to date, but is often viewed as lacking sufficient independence due to MII’s continued interference in the market, especially its continued influence with operators. In addition, the staff of the former Ministry of Post & Telecommunications is now the core staff of the new MII as well as those of China’s major telecom service providers.

China is following a path of “managed” or “introduced” competition. New market entrants are strictly controlled. Foreign investment is technically allowed but in the period since China’s WTO accession there have been extremely few applications submitted and those that are submitted are processed extremely slowly and without any clear processing guidelines. After nearly two years, not a single telecom license had fully completed the cumbersome application and examination process. The change in rules to only accept applications twice a year was trumpeted as an improvement in efficiency, but is in fact another artificial bureaucratic barrier erected to restrict market entry. The dearth of applications itself indicates a strong skepticism of the prospects for new telecom entrants to survive in the Chinese marketplace. Although the Chinese government describes the competitive landscape as “5 + 1,” in fact the top four operators account for about 99% of the revenue. Although the Chinese government has encouraged the expansion of the private sector to promote productivity, telecom services stand out in stark contrast as a sector in which private company participation is actively discouraged.

Lack of Transparency: Regulations continue to be issued without prior public discussion, a most fundamental requirement of transparent administration. For example, the Regulation on Foreign-Invested Telecommunications Enterprises (the FITE regulation) was issued in December 2001, days before its effective date (and just days after China received approval for WTO accession), and the Telecom Services Catalog was twice updated without any apparent public consultation. The most recent catalog was issued only one week prior to its date of effective implementation (April 1, 2003), by release on the MII website in Chinese-language only, and no comments from foreign industry were solicited. Since regulations directly affect the welfare and opportunities of industry participants and end-users, these groups have a direct interest—and expertise—to contribute to developing sound regulation. Transparent opportunities to participate in China’s rulemaking process are mandatory for investors to have confidence in stable investment opportunities.

Lack of Market-Driven Technology Policy: The Chinese government has shown a propensity to develop and favor standards unique to the Chinese market and to excluding meaningful participation in standards development by foreign bodies. In addition, China has shown a regulatory tendency to dictate which technologies will be used to deliver specific services (*e.g.*, cable systems will deliver video while telecom networks will

deliver voice). To meet the requirements of an independent regulator, China must adopt technology-neutral policies. Specifically, China should ensure that (1) service providers have the flexibility to select a technology or standard based solely on commercial considerations, and (2) the terms of license or regulatory authorization (including eligibility to receive a license) to provide services do not mandate the use of a particular technology or standard. The current debate over assignment of spectrum and licensing for 3G wireless services will be an important barometer of China's commitment to independent regulation.

USITO recommends that the Chinese government take the following steps in the near term to implement its WTO commitments and create a more attractive environment for private sector participation in the telecom service industry:

- **Transparency:** Implement procedures for public consultation with interested parties in advance of issuing telecom regulations.
- **Legal Framework:** Announce a plan and timetable for the preparation and adoption of a telecom law and independent regulator before 2005. This process should also include wide public consultation.
- **Current Regulations:** Adopt internationally recognized definitions of value-added services, remove artificial market entry barriers for basic services (e.g. excessive capital requirements and restrictive partner selection), and simplify licensing procedures in order to actively encourage competition and meaningful participation by the private sector operators—both foreign and domestic.
- **Technology Neutrality:** Announce that 3G licenses will not require the use of a particular technology or standard, and include technology neutrality as part of China's WTO services offer in the ongoing Doha Development Agenda.

Cable Television and Network Convergence

China's cable television (CATV) networks fall under the jurisdiction and control of the State Administration of Radio, Film, and Television (SARFT). In order to prevent competition between telecom and cable networks, the State Council in September 1999 issued Suggestions on the Reinforcement of the Administration of Wired Broadcast and Cable TV Network Construction, which states: "MII may not participate in radio or broadcast services, and SARFT may not participate in telecommunications services."

Obligations relating to the cable television market were not specifically addressed under the service-related commitments of China's WTO accession package. SARFT has taken this to mean that it has no obligations under WTO specifically to open up the cable television service industry to foreign investment. However, WTO does not define services in terms of the network medium used to offer those services. In fact, China's accession package includes a provision that specifically states that telecom service providers are allowed to offer their services through any technology they choose, including "all types of cable." In Annex 1 of the Services Addendum to the Working Party Report on China's Accession to the WTO, Notes for Scheduling Basic Telecommunication Services Commitment states: "Unless otherwise noted...any basic

telecom service...may be provided through any means of technology (e.g., cable, wireless, satellites).”

In addition, China’s domestic legislation defines telecom services to include the electronic transmission of “voice, data, or pictures.” Therefore, USITO believes any licensed telecom operator should be able to offer CATV services (i.e., transmission of pictures) as part of its business scope.

Furthermore, in the compendium to the Tenth Five-year Plan, the Chinese government explicitly states that:

“Pursuant to the instructive, market-oriented industry model for the collaborative construction of networks, collaborative share of resources, innovative development of technology innovation, and liberalized opening of competition, [China] should promote the convergence of the Internet, telecom, and cable networks, strive to secure the wide-ranging development of the IT industry, and expedite the country’s process of informatization.”

In line with this goal, both telecom providers and cable networks already offer some overlapping Internet services. Full convergence is currently only allowed on a trial basis in Shanghai, where broadcast networks are already offering value-added services such as high-speed Internet access and data entry.

The deployment of converged broadband is still mired by Chinese policies restricting inter-competition between telecom and cable. China’s current provisions are outlined by the State Council’s 1999 notice on Reinforcement of the Administration of Wired Broadcast and Cable TV Network Construction, in which inter-competition between telecom and cable is prohibited. This creates an obstacle for convergence and directly contradicts with the Basic Telecommunication Services definitions, which calls for opening telecom services to all network media. It is also contrary to the Tenth Five-Year Plan, which calls for network convergence. The State Council’s 1999 notice is still in effect and, we believe, it should be repealed.

Service obligations under the WTO are distinguished by the type of services, not by the type of network medium. Indeed, the Basic Telecommunication Services Commitment WTO provisions call for opening the telecom services market not only to network media that China deems permissible for telecom use, but to all network media. Chinese policy that prohibits cable providers from competing in telecom areas appears to be inconsistent with the WTO Protocol, because it restricts the scope of the telecom services market contrary to the network medium-independent definition.

In addition, SARFT has publicly stated that there are no commitments related to CATV under China’s WTO accession agreement, and does not allow foreign investment in CATV networks. Perhaps because content management and network transmission services have still not been completely separated, SARFT has also restricted foreign

company access to the standards development work for China's digital television standards.

USITO believes the Chinese government should:

- Allow telecom operators to offer CATV transmission services, and CATV operators to offer telecom services, nation-wide;
- Open cable television transmission services to foreign investment in accordance with China's telecom service commitments, and;
- Open standards development to foreign as well as domestic firms

India

Inappropriate Application of Customs Duties

TIA is concerned that a recent directive from Indian Customs imposes, retrospectively, customs duty on the importation of pre-loaded telecom software. This directive is inconsistent with Heading 85.24 of the Customs Tariff Act of 1975, Customs Notification No.17/2001-Cus. (SI.No.285), applicable to information technology software. This statute grants an exemption from duty to all information technology software, including the type of software that runs on telecom infrastructure equipment. This directive will lead to a substantial increase in prices for imported telecom equipment in India, as well as delays in the rollout of telecom infrastructure projects in India.

In India, telecom software recorded in magnetic media (e.g., tapes, disks or CD's) is classifiable under tariff heading 85.24 and is wholly exempt from payment of duty, treated as "information technology software." When the software in the magnetic media, along with the right-to-use license, is imported along with the hardware, the hardware and the software are assessed under the respective tariff headings. Accordingly, customs duty is not payable for the software under heading 85.24, and only the hardware portion is assessed for duty.

It is common practice for hardware suppliers to pre-load the software in the offshore factory to test the equipment and thus send the hardware pre-loaded with the necessary software, but at the same time, separately ship the magnetic media along with the right-to-use licenses. Pre-loading at the factory is undertaken as a convenience to the customer and ensures product quality and reliability prior to shipment into India.

Indian Customs mandated in a directive of July 12, 2002, that whenever telecom software is pre-loaded on the hardware before importation, the value of the software will be included in the hardware and the customs duty on the hardware will be charged, including the software value. This is a position taken by the Indian Customs even when the software in question and the right-to-use license are separately shipped, and may be sold by different corporate entities. As a result, the customs duty assessable on hardware is increased considerably with a resulting price increase to the end-user. In addition, the

Customs directive is being applied retrospectively. The result is that duty, along with considerable penalties, may be charged on past imports.

TIA believes that the Customs actions are not within the law and will result in a considerable increase in the cost of telecom equipment that will have to be borne by end-users.

Republic of Korea

Unfair Standards Development Practices

WIPI: The Korean government is actively encouraging Korean industry to choose the Wireless Internet Platform for Interoperability (WIPI) as the middleware that delivers content to the networks of wireless operators, and may mandate WIPI in early 2004.

TIA understands that the effort to develop WIPI was originally led by the Ministry of Communications (MIC). When the United States government called attention to the Korean government's role in the development of WIPI, the MIC ostensibly removed itself from the process and the Korean Wireless Internet Standardization Forum (KWISF) was formed. Although the Korean government asserts that the forum is a private sector body, it is our understanding that this forum receives substantial financing from the largely government-funded Electronics and Telecommunications Research Institute (ETRI) and that ETRI has asked the Korean legislature for money to work on the WIPI project.

The actions of the Korean government with regard to WIPI discriminate against technologies developed by U.S. companies. The Korean government's goal is to achieve interoperability. Without comment on interoperability as a public policy goal, TIA believes that the private sector should lead this effort and should be allowed to participate in a transparent process that includes all relevant players. Moreover, the Korean government should not mandate the use of the platform it helped create at the exclusion of other technologies. This does not adhere to the WTO principle that policy goals should be implemented in the least trade-restrictive manner possible.

2.3 GHz: In August 2003, TTA (the Korean telecommunications standardization body) initiated a standards process for technologies to be deployed in the 2.3 GHz band. The standardization process is defined in two phases: Phase I, in which basic air interface parameters will be determined, and Phase II, in which the detailed standard will be developed. Phase I is scheduled for completion by the end of this year, and Phase II is scheduled to be completed in 2004.

U.S. industry understands that the Ministry of Information and Communications will allow only the TTA-standardized air interface for the 2.3 GHz band to be deployed in the band, and will prevent other air interfaces from being deployed simultaneously. In addition, MIC allowed certain candidate technologies to be demonstrated in live trials in Korea, while others were only allowed to show simulation results. This is problematic

because simulation data is not comparable to trial data. The actions regarding test data, combined with our belief that the government intends to mandate a domestically-developed technology, will likely exclude certain U.S. companies from the Korean market. This is certainly against the spirit – and the letter – of the WTO TBT agreement, and also seems to violate the principle of national treatment.

Location Technologies: TIA understands that the Korean government has given the Electronics and Telecommunications Research Institute a significant amount of money to develop a standard for location technology and that MIC is participating in the steering group on this issue. TIA also understands that the Korean Association of Information and Telecommunication (KAIT) formed an “LBS Forum” (Location-Based Services Forum) in March 2003 for three primary activities – the development of an LBS standard, business development and international cooperation. ETRI chairs the standards development work in KAIT, and the Ministry of Commerce, Energy and Industry and other government entities are on the board of directors of the LBS Forum.

This structure raises two primary concerns. First, while the development of the standard may be nominally driven by the private sector, the heavy presence of government entities on the Board overseeing the LBS forum seems to belie the assertion of the Korean government that the private sector is leading the effort. Second, the Korean government has given significant funding to ETRI to do research in this area, and it is our understanding that if an ETRI technology were to be chosen, the Korean government would pay royalties to ETRI. While Korean government support of research and development is not inherently problematic, TIA and its members are concerned that resulting technologies will be mandated.

TIA also understands that MIC currently does not have statutory authority to impose an industry mandate for a location technology, but it is in the process of asking the Korean legislature for authority to do so. It appears that the Korean government already has decided that it will not accept existing location technologies. Thus, it is about to embark on another government-led process to first develop, and then mandate, a technology that disadvantages foreign suppliers. This would constitute a trade barrier because it would unfairly discriminate against foreign technology developers.

Government Procurement

Korea joined the WTO Agreement on Government Procurement (GPA) on January 1, 1997. The scope of the Korean commitment included the procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments, and some two-dozen government-invested companies. However, Korea’s GPA commitment currently does not include Korea Telecom’s purchases of telecommunications products and network equipment. This influence on Korea Telecom and its subsidiary, KTF, has resulted in a procurement process that is not transparent or fair, and that discriminates against non-Korean suppliers. For example, for a recent project, KTF added a second benchmark test for bidders with criteria that favored Korean suppliers.

USTR should urge the Korean Government not to influence the procurement decisions of privately held companies, such as Korea Telecom and KTF. In addition, any procurement decisions made by the Korean government should be made in the spirit of the GPA.

Latin America and the Caribbean

Import Tariffs

TIA remains concerned that only three players in Latin America (Costa Rica, El Salvador, Panama) have joined the United States, the European Union, Japan, India, and others in signing the ITA. All other Latin American countries, many of whom are key trading partners in the region, continue to maintain high tariff rates while benefiting from the elimination of tariffs in other markets, taking advantage of the fact that the ITA is a voluntary agreement. If Brazil and its neighbors cannot be persuaded to join the ITA voluntarily, then the United States government should push for making the ITA binding in the FTAA or WTO Doha negotiations.

TIA is encouraged that Mexico has chosen to unilaterally reduce tariffs on high-tech goods, but urges Mexico, and all other Latin American countries, with the exception of the three listed above, to formally adopt the ITA.

Mexico

Standards, Testing, Labeling and Certification

Mexico was required under its NAFTA obligations, starting January 1, 1998, to recognize conformity assessment bodies in the U.S and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico has indicated that it is willing to conform to these obligations only when the Government of Mexico determines that there is additional capacity needed in conformity assessment services. So far, no U.S. or Canadian conformity assessment bodies have been recognized by Mexico for most products that are exported from the U.S. and Canada to Mexico that require product certification. However, Mexican authorities showed promising signs in the fourth quarter of 2003 of living up to those obligations, after a major US certification organization submitted its accreditation application in line with Mexican laws and regulations. Although such signs are encouraging, critical junctions in the accreditation approval process will come in the first quarter of 2004 and will ultimately indicate whether Mexican authorities intend, in good faith, to live up to their NAFTA obligations. The US government should continue to encourage Mexican authorities to process and approve such foreign companies' applications in a timely manner.

Both the U.S. and Canada have openly recognized each other's conformity assessment bodies under the same NAFTA provisions for many years. This has promoted U.S.–Canadian trade by reducing the burden on exports from each other's markets, while meeting the confidence needs of the regulators and the market by allowing manufacturers to obtain needed conformity assessments locally that provide market access for both the U.S. and Canada.

Thus, we urge the government of Mexico to recognize and implement their NAFTA obligations to recognize conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies.

Russia

Product Certification

The Russian Ministry for Communications and Information made some progress in 2003 toward improving the regulatory framework under which the telecommunications industry operates. Specifically, the Duma passed, in May 2003, a law amending the Russian Communications Law with the goal of opening the market and addressing competition issues. On July 1, 2003, new technical regulations came into force aimed at streamlining and increasing transparency to the current system of technical regulations. Further, new customs codes will come into effect on January 1, 2004, with the goal of creating a reliable and efficient customs rules and procedures regime.

Despite the laudable efforts, the process for certifying telecommunications equipment in Russia remains burdensome, costly and out of step with the nature of technological advancement. The biggest hurdle facing telecom vendors exporting to Russia is Russia's unwillingness to accept technical certificates from other countries as proof of a product's quality or compliance with technical requirements.

Lack of Harmonization with International Procedures: Unlike the vast majority of international markets, Russian law calls for mandatory national certification and type approval of telecommunications equipment before the provision of services can begin within Russia. While the EU and U.S., for example, accept technical certifications from accredited laboratories, Russia will not. As a result, the deployments of both simple and advanced technologies are automatically delayed within its borders.

Compounding the problem is the fact that Russia does not provide an efficient or consistent certification program as an alternative. Mandatory certification requirements sometimes are overly prescriptive and rigid and go beyond normal concerns of ensuring essential health and safety requirements. In the telecom sector, for example, the approval process covers not only radio and terminal equipment, issues of electrical safety or electromagnetic compliance, but it includes all network elements and supplementary products with their various features and functions.

Added Costs and Time Delays: The Russian Ministry of Communications and Information continues to employ a long and costly process for certifying telecommunications equipment for domestic use. The Russian certification process, which more often than not calls for the completion of testing identical to that done outside the Russian market on the same product, takes at least three months, and costs range from US\$10,000 to US\$100,000 per testing cycle.

Vendors are frustrated by delays, which cost millions of dollars in time spent obtaining certificates, hiring additional human resources to complete the certification process, and paying fees to commercial entities licensed by the Ministry to conduct certification. In general, the certification process is lengthy, inefficient, expensive and non-transparent, and there does not appear to be a genuine effort to harmonize Russian telecom standards and procedures with those required by the WTO.

A Step Behind Technological Advancement: In addition to other items which contribute to certification delays, the lack of a standard set of tests, the requirement for factory tests (i.e. tests conducted and observed outside of Russia) and the absence of guarantees on a testing schedule also add to the burdensome nature of the Russian certification system. Although the Russian Government argues that the requirements are necessary to ensure that the highest standard of technology is introduced into the Russian market, these delays and ambiguities in the approval process hinder the deployment of advanced technologies in Russia as quickly as the market demands. The lengthy duration of the approval procedure, which sometimes amounts to a year and more, is disproportionate to the technological cycles and contemporary product lifetime.

Recommendations

As Russia continues its effort to open its market to global competition, as demonstrated in its ongoing effort to join the WTO, it must introduce and implement reforms at all levels to create the conditions that will ultimately allow Russia to benefit from increased foreign investment. TIA encourages the Ministry of Communications and Information to modernize its telecom equipment certification process by adopting the following key elements:

Harmonize certification procedures with international and WTO telecom principles. Complying with internationally recognized procedures will increase transparency and certainty for industry.

Eliminate the need for duplicative testing. To avoid added costs and administrative burden, the Ministry should recognize the testing and certification done on a product by internationally accredited laboratories. Domestic testing requirements should be used as a last resort and only if it is demonstrated that a functionality specific to Russia cannot be certified elsewhere.

Publish a standard list of required tests. The Ministry should make publicly available a standard list of specifications that must be met for equipment entering the Russian market.

Work directly with industry to understand the pace of technological change. By increasing its understanding of technological change and the true impact of product change, the Ministry will be better equipped to evaluate which tests should be mandatory and which minor changes to a product may or may not need to be re-certified.

Taiwan

Adherence to the WTO Agreement on Government Procurement (GPA)

In connection with Taiwan's accession to the WTO, the government agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bidding process on major government procurement contracts, but TIA is concerned about actions taken by the government in the past year that indicate that Taiwan is not acting in the spirit of the GPA. In addition, Taiwan may be contravening its own government procurement law, which became effective in mid-1999. The new law is being implemented and enforced by a centralized body, the Public Construction Commission. TIA urges USTR to continue to engage Taiwan in negotiations to resolve inequities and transparency concerns in Taiwan's government procurement regime.

Taiwanese Government Contracts and Bidding Terms

Chunghwa Telecommunication's (CHT) standard contract terms are not consistent with global industry standards: they do not include a standard software right-to-use (software RTU) license or a standard limitation of liability. Standard contract terms used in connection with procurement of telecom and IT equipment by CHT and certain other Taiwan government entity end-users through Central Trust of China ("CTC") do not include global industry standard software right-to-use licenses or limitation of liability terms, which provide for overall caps on liability and standard exclusions of liability for consequential losses, lost revenues, lost profits, and the like (industry standard terms and conditions).

Under Taiwan's government procurement law as administered by CTC, any bid response proposing the inclusion of such industry standard terms will be deemed non-compliant, and the bidder will be disqualified (i.e., there is no opportunity to negotiate). The absence of software RTU licenses in Taiwanese government procurement contracts is inconsistent with intentions of the parties and the nature of the transaction, and this creates unfair legal risk and uncertainty.

Limitation of Liability: Global pricing of IT and telecom equipment is based on limitation-of-liability clauses, which represent an industry-wide global risk allocation between suppliers and end users. Taiwan's government procurement contracts shift this risk back to suppliers. However, suppliers cannot adequately adjust pricing to cover this risk on a single-project or single-customer basis.

International Practices and Consequences:

Taiwan's government procurement departments generally have not been sympathetic to requests for changes to their terms and conditions. This is because these terms and conditions are based on a model contract, and government procurement officials are reluctant to make changes without specific guidance from senior administrators and managers. Unfortunately, this model contract was based on a 1960's-era U.S. government procurement contract template that pre-dated current generation telecom and IT supply contracts. As such, these standard terms and conditions are completely outdated and are not consistent with international industry practices.

CHT contracts are not as up-to-date as procurement contracts signed by TaiPower, Taiwan NLOs or even People's Republic of China (PRC) state-owned telecom companies:

- TaiPower procurement contracts limit overall liability of the supplier in accordance with global industry practice.
- Procurement contracts of newly licensed operators in Taiwan all contain industry standard software RTU licenses and limitation of liability clauses.
- Procurement contracts signed by PRC state-owned telecom operators with foreign vendors also uniformly contain software RTU and limitation of liability clauses.

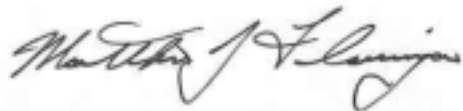
In the telecom and IT sectors, systems and networks are routinely comprised of both proprietary and original equipment manufacturer (OEM) products. However, many OEM vendors are unwilling to accept CHT and Taiwanese government procurement contract terms and conditions, but principal equipment suppliers cannot assume the liability risk for OEM vendors. As a result, CHT and other government agencies are not able to procure certain industry-leading technologies. TIA recommends that CHT and Taiwan government departments in telecom and IT sectors should accept global industry standard contract terms, including:

- Standard software RTU licenses;
- Overall caps on liability; and
- Standard exclusions of liability for consequential losses, lost revenues, and lost profits.

Conclusion

Thank you again for the opportunity to comment on trade barriers that our members face throughout the world. If you have any questions about this document or if we can assist you in other ways, please do not hesitate to contact Jason Leuck, TIA's Director of International Affairs, at 703-907-7725 or jleuck@tiaonline.org.

Sincerely,



Matthew J. Flanigan
President